

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PATRICIA SCHWEND, <i>n/k/a</i>)	
PATRICIA SCHWEND-McCUMMISKEY,)	
)	
Plaintiff,)	Case No. 4:10-cv-01590-CDP
vs.)	
)	
US BANK, N.A., et al.)	
)	
Defendants.)	

**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF’S
SECOND AMENDED CLASS ACTION COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 56(c) and Local Rule 7-4.01(E), Defendants US Bank, N.A. (“US Bank”) and Wells Fargo Bank, N.A. (“Wells Fargo”) (collectively “Defendants”), move for summary judgment on Plaintiff Patricia Schwend-McCummiskey’s (“Plaintiff” or “Schwend”) Second Amended Class Action Complaint (“Complaint”). In support of this Motion, Defendants state the following:

1. The Complaint contains a single count for wrongful foreclosure based on the alleged lack of standing of US Bank to foreclose on Plaintiff’s property. It alleges generally that, following the pooling of her loan with others into an asset-backed security, US Bank was not the holder of her note and deed of trust or that the transfer of these instruments to US Bank was ineffective.

2. Plaintiff also claims that Defendants were estopped from foreclosing while in the process of approving modifications of loans because of Defendants’ participation in federal loan modification programs.

3. Summary judgment is warranted in this case because (1) US Bank had the authority to foreclose on Plaintiff’s property under well-established UCC principles because it

was the holder of her note, (2) a borrower has no standing to challenge the securitization of her note, and (3) US Bank was not estopped from foreclosing because no private right of action exists under HAMP or any other federal loan modification programs, and, in any event, Plaintiff's claim is barred by the statute of frauds.

4. Defendants incorporate their Memorandum in Support and Statement of Uncontroverted Material Facts filed with this Motion.

WHEREFORE, Defendants respectfully request that this Court enter summary judgment on Plaintiff's Class Complaint, award Defendants their costs, and for such further relief as the Court deems appropriate.

Respectfully submitted,

BRYAN CAVE, LLP

/s/ Eric D. Martin

Eric D. Martin, USDC #: 47558MO
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102
Telephone: (314) 259-2000
Fax: (314) 259-2020
E-mail: eric.martin@bryancave.com

Ashley H. Nall, USDC #: 59960MO
161 North Clark Street, Suite 4300
Chicago, Illinois 60601
Telephone: (312) 602-5097
Fax: (312) 698-7497
E-mail: ashley.nall@bryancave.com

*Attorneys for Defendants US Bank, N.A. and Wells
Fargo Bank, N.A..*

CERTIFICATE OF SERVICE

I, hereby certify that on January 20, 2012, the foregoing was filed electronically with the Clerk of Court to be served to the following by operation of the Court's electronic filing system:

Gregory P. White
8000 Bonhomme, Suite 316
Clayton, Missouri 63105

Peter M. Westoff
7751 Carondelet, Suite 800
Clayton, Missouri 63105

John Campbell
800 Market Street, Suite 1700
St. Louis, Missouri 63101

Attorneys for Plaintiff

/s/ Eric D. Martin